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(1940-2011)  
AARON LASSER  
(1895-1970)  
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(1933-1983)

\*NJ AND NY BARS  
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#NJ, NY AND DC BARS

April 1, 2015

**Via Email & Federal Express**

William H. Hyatt, Jr.  
Coordinating Counsel to LPRSA Cooperating Parties Group  
K&L Gates LLP  
One Newark Center, 10<sup>th</sup> Floor  
Newark, NJ 07102

Re: Eden Wood Corporation / Response to Notice of Default

Dear Mr. Hyatt:

This letter responds to the January 2, 2015 Notice of Default to Eden Wood Corporation directed to Michael K. Plumb of Wolff & Samson PC and to your letter dated March 23, 2015. Eden Wood Corporation has asked Lasser Hochman, LLC to respond to your letters on its behalf. We thank you for your courtesy in allowing us time to gather and review pertinent documents in order to prepare this important response.

Our review of available information indicates that *serious* mistakes were made in the identification of Eden Wood Corporation, a Delaware corporation ("Eden Wood-Delaware") as a potentially responsible party for the Lower Passaic River Study Area of the Diamond Alkali Superfund Site ("Site"). As explained below, these mistakes have resulted in the wrong entity being pursued as a PRP and improperly paying in excess of \$1.8 million for a Site for which it bears no responsibility at all.

*Background*

As you know, on September 11, 2006, EPA issued a General Notice Letter ("GNL") under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA") to Eden Wood-Delaware, in its capacity as the alleged successor to Whippany Paper Board Company, Inc. ("Whippany"). The GNL and a follow-up letter from EPA dated January 31, 2007 ("Follow-Up Letter") alleged that Whippany is liable under CERCLA as a result of

hazardous substance discharges into the Lower Passaic River from the former Whippany facility located at 1 Ackerman Avenue in Clifton, New Jersey (the “Clifton Plant”).

Although the GNL and Follow-Up Letter indicated that EPA made the determination that Eden Wood-Delaware was potentially liable for the Site, we understand that EPA issued the GNL to Eden Wood-Delaware and numerous other businesses based on a May 3, 2006 report (“CPG Report”) detailing the results of the CPG’s investigation into the identity of and basis for adding more parties to EPA’s then-existing list of potentially responsible parties—thereby adding to the membership of the CPG. The GNL and Follow-Up Letter as well as a February 23, 2007 letter to Eden Wood-Delaware from you on behalf of the CPG threatened joint/several liability for all costs, legal actions and other substantial consequences if Eden Wood-Delaware did not join the CPG and participate in a settlement with EPA. It was against this backdrop that Eden Wood-Delaware joined the CPG. However, as stated in a March 20, 2007 letter to EPA from Eden Wood-Delaware’s attorney at the time, Herbert Bennett, and as reflected in the Amended and Restated CPG Organization Agreement effective May 8, 2007, Eden Wood-Delaware joined the CPG without any admission of liability with respect to the Site.

*Eden Wood-Delaware is not the successor to Whippany*

The CPG Report alleged that Eden Wood-Delaware is the successor to Whippany, apparently based on information from the New Jersey Secretary of State records indicating that Whippany changed its name to “Eden Wood Corporation” in July 1988.<sup>1</sup> The CPG Report provided EPA with Eden Wood-Delaware’s corporate address and President’s name for purposes of issuing the GNL.

Our review indicates, however, that Eden Wood-Delaware is not the New Jersey corporation that succeeded to Whippany. Rather, the entity named in the GNL and being pursued by the CPG is a Delaware corporation<sup>2</sup> that was not even incorporated until June 6, 2001— more than a decade after Whippany changed its name to Eden Wood Corporation.<sup>3</sup> Eden Wood-Delaware is a totally different entity from the Eden Wood Corporation that succeeded to Whippany and has no connection whatsoever to the alleged hazardous substance discharges to the Lower Passaic River from the Clifton Plant.

The CPG’s mistaken identification of Eden Wood-Delaware as the successor to Whippany apparently resulted from the failure to conduct a thorough review of New Jersey Secretary of State records which show, among other things, that on January 2, 1996, Eden Wood Corporation changed its name to Neu Holdings Corporation, a New Jersey corporation. Additional changes to

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<sup>1</sup> See enclosed Certificate of Amendment to the Certificate of Incorporation of Whippany Paper Board Co., Inc., identified in the CPG Report as ABK 000396-398.

<sup>2</sup> See e.g. Paragraph 2 of your proposed Complaint (dated March 23, 2015).

<sup>3</sup> The articles of incorporation for Eden Wood-Delaware are enclosed. It should be noted that Eden Wood-Delaware’s former attorney, Herbert Bennett, provided them to Karyllan Dodson Mack of K&L Gates by letter of May 9, 2007. In addition, the CPG Report suggested that Eden Wood Realty, LLC an affiliate of Eden Wood-Delaware, could also be liable a successor to Whippany. However, Eden Wood Realty, LLC is also a Delaware corporation and was not incorporated until October 18, 1999. Its articles of incorporation are also enclosed.

the corporate structure and state of incorporation of the successor to Whippany occurred after that time. But in any event, the successor entity to Whippany has not received a GNL and is not a party to the CPG agreements concerning the Site.

We are willing to provide you with documentation of the complete history of the Whippany/Eden Wood Corporation entity, but the bottom line is that this mutual mistake concerning the proper “Eden Wood Corporation” entity must be addressed and rectified.

*Whippany’s Bankruptcy Discharge and the Subsequent Owners and Operators of the Clifton Plant*

As to the CPG’s possible pursuit of the proper Whippany successor entity, we call to your attention the fact that on February 8, 1980, Whippany filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the District of New Jersey (the “Bankruptcy Court”), said proceedings having been designated *In re Whippany Paper Board Co.*, No. 80-00426. Pursuant to an order entered on March 31, 1981 (the “Bankruptcy Discharge Date”), the Bankruptcy Court confirmed Whippany’s Chapter 11 Plan of Reorganization—which, in accordance with the provisions of 11 U.S.C. § 1141(d)(1), expressly provided for the discharge of any and all liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed and/or undisputed “debts that arose before the date of such confirmation.”

As indicated in the CPG Report, Whippany’s operations at the Clifton Plant ceased in 1980, almost a year before the Bankruptcy Discharge Date in Whippany’s Chapter 11 proceedings. Moreover, while Whippany continued to own the Clifton Plant after emerging from bankruptcy, it did not conduct any operations at the Clifton Plant after the Bankruptcy Discharge Date. Whippany sold the Clifton Plant to an unrelated, third-party, V. Ponte & Sons, Inc. (“Ponte”) in 1987 which then transferred it to Recycled Paper Board, Inc. (“RPB”) in 1988. Ponte and/or RPB engaged in manufacturing operations at the Clifton Plant for many years. We leave to you and the CPG the issue of whether the owners and operators of the Clifton Plant subsequent to Whippany should be pursued as PRPs. Based upon the sequence of events described above, however, we believe that any attempt on the part of the CPG to pursue liability relating to the Clifton Plant against the proper Whippany successor entity would directly violate the discharge injunction imposed under 11 U.S.C. § 524(a)(2)(expressly enjoining “any act to collect [or] recover” any debt that has been discharged in bankruptcy.)

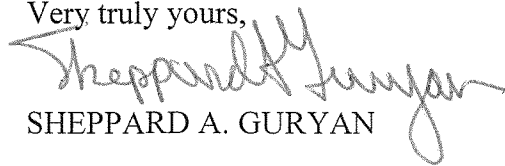
*Response to Default Notice*

CPG is seeking payment from Eden Wood-Delaware for its allocated share of costs under the Amended and Restated Organization Agreement, as amended, associated with the RI/FS AOC and the RM 10.9 AOC. The alleged amount owed (\$490,325) is in addition to the over \$1.8 million paid by Eden Wood-Delaware before it withdrew from the CPG in September 2013.

As discussed above, Eden Wood-Delaware is not the legal successor to Whippany and, consequently, cannot be subject to liability under CERCLA for any costs associated with the Site. Moreover, we believe that to the extent that Whippany may have borne any CERCLA liability with respect to the Site, such liability was fully discharged in Whippany’s Chapter 11 proceedings.

Notwithstanding the foregoing, we believe it would be in both of our clients' best interests to pursue a mutually agreeable settlement to resolve the grave mutual mistakes that have been made to date in connection with this matter. We are amenable to discussing a resolution that may include the CPG retaining a substantial portion of the payments already made by Eden Wood-Delaware in exchange for a full release of Eden Wood-Delaware and its affiliates by the CPG for any and all past, present and future costs associated with the Site and the agreements entered into by mutual mistake. To that end, we propose to meet with you in person to discuss an appropriate resolution.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Sheppard A. Guryan". The signature is fluid and cursive, with a large initial "S" and a long, sweeping underline.

SHEPPARD A. GURYAN

SAG/lh

Cc: Warren L. Dean, Jr., Esq.  
Dennis M. Toft, Esq.

Form C-102A  
Rev. 7/83

## CERTIFICATE OF AMENDMENT TO THE

## CERTIFICATE OF INCORPORATION OF

WHIPPANY PAPER BOARD CO., INC.

(For Use by Domestic Corporations Only)

FILED

JUL 19 1988

JANE BURGIO

To: The Secretary of State "FEDERAL EMPLOYER IDENTIFICATION NO." Secretary of State  
State of New Jersey 22 - 1380200

Pursuant to the provisions of Section 14A:9-2(4) and Section 14A:9-4(3), Corporations, General, of the New Jersey Statutes, the undersigned corporation executes the following Certificate of Amendment to its Certificate of Incorporation:

1. The name of the corporation is Whippany Paper Board Co., Inc.
2. The following amendment to the Certificate of Incorporation was approved by the directors and thereafter duly adopted by the shareholders of the corporation on the 5th day of July, 19 88:

Resolved, that Article First of the Certificate of Incorporation be amended to read as follows: The name of the corporation is EDEN WOOD CORPORATION.

3. The number of shares outstanding at the time of the adoption of the amendment was 1000. The total number of shares entitled to vote thereon was 1000.

If the shares of any class or series are entitled to vote thereon as a class, set forth below the designation and number of outstanding shares entitled to vote thereon of each such class or series. (Omit if not applicable.)

4. The number of shares voting for and against such amendment is as follows: (If the shares of any class or series are entitled to vote as a class, set forth the number of shares of each such class and series voting for and against the amendment, respectively.)

<u>Number of Shares Voting For Amendment</u>	<u>Number of Shares Voting Against Amendment</u>
1000	0

(If the amendment is accompanied by a reduction of stated capital, the following clause may be inserted in the Certificate of Amendment, in lieu of filling a Certificate of Reduction under Section 14A:7-19, Corporations, General, of the New Jersey Statutes. Omit this clause if not applicable.)

5. The stated capital of the corporation is reduced in the following amount: N/A. The manner in which the reduction is effected is as follows:

The amount of stated capital of the corporation after giving effect to the reduction is \$ N/A. (Must be set forth in dollars.)

946010565

ABK000396

6. If the amendment provides for an exchange, reclassification or cancellation of issued shares, set forth a statement of the manner in which the same shall be effected. (omit if not applicable.)

N/A

(Use the following only if an effective date, not later than 30 days subsequent to the date of filing is desired.)

7. The effective date of this Amendment to the Certificate of Incorporation shall be N/A.

Dated this 13<sup>th</sup> day of July, 19 88.

WHIPPANY PAPER BOARD CO., INC.

(Corporate Name)

By [Signature]

(Signature)

John L. Neu, President

(Type or Print Name and Title)

(May be executed by the chairman of the board, or the president, or a vice-president of the corporation.)

Return to Secretary of State, CN 300, Trenton, N. J. 08625. Attn: Corporation Filing.

Filing Fee \$50.00

NOTE: No recording fees will be assessed.

TRANSACTION NO.:

WILDER NO.:

FILED BY:

WHIPPANY PAPER BOARD CO., INC.  
(Domestic Corporations Only)

CERTIFICATE OF AMENDMENT TO  
CERTIFICATE OF INCORPORATION OF

RECORDED AND FILED:

Recorder's Initials

946010566

ABK000397

NO. 615 P. 4/4

EDEN WOOD REALTY COMPANY

4:22PM

JUL. 24. 1997

I, The Secretary of State of the State of  
New Jersey, DO HEREBY CERTIFY that the foregoing is a true copy  
of CERTIFICATE OF *AMENDMENT*  
and the endorsements thereon, as the same is taken from and  
compared with the original filed in my office on the *19th*  
day of *July*, A.D. *1988* and now remaining on file  
and of record therein.



IN TESTIMONY WHEREOF, I have  
hereunto set my hand and affixed my  
Official Seal at Trenton, this *19th*  
day of *July*, A.D. *1988*

SECRETARY OF STATE

*James Bevilacqua*

946010567

ABK000398

*State of Delaware*  
*Office of the Secretary of State*

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PAGE 1

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "EDEN WOOD CORPORATION", FILED IN THIS OFFICE ON THE SIXTH DAY OF JUNE, A.D. 2001, AT 9 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



*Harriet Smith Windsor*  
Harriet Smith Windsor, Secretary of State

3400425 8100

AUTHENTICATION: 1175373

010271743

DATE: 06-06-01

CERTIFICATE OF INCORPORATION  
OF  
EDEN WOOD CORPORATION

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FIRST. The name of this corporation shall be:

EDEN WOOD CORPORATION

SECOND. Its registered office in the State of Delaware is to be located at 2711 Centerville Road Suite 400 in the City of Wilmington, County of New Castle and its registered agent at such address is CORPORATION SERVICE COMPANY

THIRD. The purpose or purposes of the corporation shall be:

To engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

FOURTH. The total number of shares of stock which this corporation is authorized to issue is:

One Thousand Shares (1,000) With No Par Value


FIFTH. The name and address of the incorporator is as follows:

Tracy Manganelli  
Corporation Service Company  
2711 Centerville Road Suite 400  
Wilmington, DE 19808

SIXTH. The Board of Directors shall have the power to adopt, amend or repeal the by-laws.

SEVENTH. No director shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty by such director as a director. Notwithstanding the foregoing sentence, a director shall be liable to the extent provided by applicable law, (i) for breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the Delaware General Corporation Law or (iv) for any transaction from which the director derived an improper personal benefit. No amendment to or repeal of this Article Seventh shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment.

IN WITNESS WHEREOF, the undersigned, being the incorporator hereinbefore named, has executed, signed and acknowledged this certificate of incorporation this 6th day of June, 2001.

  
Tracy Manganelli  
Incorporator

State of Delaware  
Office of the Secretary of State

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PAGE 1

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "EDEN WOOD REALTY LLC", FILED IN THIS OFFICE ON THE EIGHTEENTH DAY OF OCTOBER, A.D. 1999, AT 4:30 O'CLOCK P.M.



A handwritten signature in cursive script, reading "Edward J. Freel", is written over a horizontal line.

Edward J. Freel, Secretary of State

3112462 8100

991440976

AUTHENTICATION:

0032714

DATE:

10-19-99

**CERTIFICATE OF FORMATION**

**OF**

**EDEN WOOD REALTY LLC**

The undersigned, an authorized natural person, for the purpose of forming a limited liability company under the provisions and subject to the requirements of the State of Delaware (particularly Chapter 18, Title 6 of the Delaware Code and the acts amendatory thereof and supplemental thereto, and known, identified, and referred to as the "Delaware Limited Liability Company Act"), hereby certifies that:

**FIRST:** The name of the limited liability company (hereinafter called the "limited liability company") is **EDEN WOOD REALTY LLC**.

**SECOND:** The address of the registered office and the name and the address of the registered agent of the limited liability company required to be maintained by Section 18-104 of the Delaware Limited Liability Company Act are The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

Executed on October 18, 1999.



Chris M. Smith, Authorized Person

NYDOC3034912191

\*\* TOTAL PAGE.03 \*\*